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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CAPT. JAMES LINLOR, pro se Plaintiff, v. MICHAEL POLSON, in his individual capacity Defendant	Case No.: 1:17cv13 (AJT/JFA) **PLAINTIFF'S MOTION TO DETERMINE SPOLIATION OF EVIDENCE AND APPROPRIATE SANCTIONS** Memorandum of Points and Authorities (Oral arguments waived; Request adjudication on pleadings only.) Hearing: Friday, 20 October 2017 Time: 10:00 am Judge: Hon. John F. Anderson

1. NOW COMES pro se Plaintiff, and moves this Court pursuant to Federal Rules of Civil Procedure 37(b) and 37(e), and this Court's inherent power to proportionally enter an Order granting default judgment against Defendant Michael Polson, and further monetary, declarative, and injunctive sanctions for bad faith in addition to negligence and willful conduct, for willful and bad faith spoliation of evidence in Defendant's possession, custody, or control, of video recordings crucial to Plaintiff's claims and emails and other ESI with incriminating evidence against Defendant and substantive to Plaintiff's case.

2. In the alternative, Plaintiff moves this Court for two adverse jury instructions severally preventing Defendant from arguing that excessive force was not used by Defendant against Plaintiff, and affirming that destroyed evidence supports Plaintiff's

claims, still inclusive of separate monetary, declarative, and injunctive sanctions as requested.

3. Facts and case law in support of Plaintiff's motion are listed herein.

4. Suggested Orders, alternative to the Court's discretion, are included.

"It is difficult to imagine conduct that is more worthy of being considered litigation misconduct or more worthy of sanctions than spoliation of evidence in anticipation of litigation because that conduct frustrates, sometimes completely, the search for truth." Samsung Elecs. Co. v. Rambus Inc., 439F. Supp. 2D 524, 535 (E.D. Va. 2006)

MEMORANDUM OF POINTS AND AUTHORITIES

At issue: Does <u>bad faith</u> spoliation occur from:

- **a Court-recognized lack of any litigation hold under FRCP 37(e), by individual capacity Defendant and parties TSA and MWAA in Defendant's control for evidence crucial to Plaintiff's case, with critical, demonstrated harm from repeatedly warned-against destruction of evidence; plus**
- **failure by a Defendant, and parties TSA and MWAA in Defendant's control to establish a litigation hold required and resulting in a violation of FRCP 37(b)(2)(A) contrary to the Court-approved Rule 45 subpoena for providing video evidence from all cameras within 50 feet of the incident?**

Also at issue: Are sanctions appropriate:

- **for failures to disclose witnesses' contact information in violation of FRCP 37(c) for individual capacity witnesses; and if so,**

Do the totality of bad faith spoliation plus failures to disclose, proportionally with 9+ DOJ/DHS/TSA/MWAA lawyers vs. *pro se* Plaintiff, violating their duties as recognized by this Court for ESI litigation holds on specific, timely-named, crucial evidence warrant a default judgment for Plaintiff plus sanctions on Defendant, or merely adverse jury instructions plus third party sanctions?

- Proportionality is considered in two aspects:
  - <u>the minimal amount of explicit evidence requested to be retained and corresponding minimal cost and effort</u> (likely fewer than a dozen video recordings, the likely poorest angle/view of the incident of which seems to

have been purposely chosen and still dithered or otherwise altered to produce a doubtful video, plus one individual's text messages, emails, and social media screen captures), which were hardly a burden to retain, and which were repeatedly requested by Plaintiff to avoid any misunderstanding or misinterpretation; plus

- the either unlikely incompetent or more convincingly **bad faith actions of 9+ Senior DC Attorneys plus US Attorneys/Assistant Attorneys** (the resources and legal expertise of the DOJ's US Attorney Dana Boente plus three named Assistant US Attorneys (Murley, Sylvertooth, Barghaan, so far), DHS Attorneys referenced in Defendant's disclosures, TSA Attorneys referenced in Defendant's disclosures (individual Defendant's employer), and quasi-governmental MWAA with their two attorneys from a high-priced DC law firm, with requested litigation holds having been made verbally by Plaintiff to Defendant (affirmed by Defendant's co-workers and supervisors herein), and in written requests to all parties the day after the incident, totaling at least 9 seasoned attorneys who should know to preserve evidence and not fail to disclose witness information, **all vs. the *pro se* Plaintiff.**

- Substantiation draws on recognition by the Court (see Exhibit A) of no preservation holds made by MWAA, no preservation holds produced as having been requested by Defendant, and non-made-as-required preservation holds made by TSA despite requests directly to TSA under potential pending litigation, all leading to admitted destruction of evidence.
- Criticality of the evidence destroyed (e.g., "harm done") and legal requirements and penalties are provided.

PROOF OF SPOLIATION AND HARM CAUSED WARRANTING SANCTIONS

1. Defendant and his counsels have not provided any proof of any litigation hold in responsive documents under FRCP 26 or 34.
2. Defendant and his counsels have admonished Plaintiff and complained that they have provided all documents and ESI in their control in their objections to Plaintiff's discussion of a Motion to Compel production of evidence.

3. 3rd Party MWAA, the ultimate provider of video evidence (despite MWAA's officers claims to the contrary in Exhibt B) did provide "smoking gun" proof of no requests for being made by them as recognized by this Court (see Exhibit A, page 2), including no litigation holds at the behest of Defendant to retain and preserve relevant video evidence.
4. 3rd Party TSA, which was also Defendant's employers, and which is represented in this case by the same attorney Counsel Sylvertooth as Defendant Polson, also did not provide any proof of any litigation hold in responsive documents to the Court-approved subpoena.

BACKGROUND

5. Plaintiff's Bivens claim for Excessive Force as a violation of the 4th Amendment has many factors, but as asserted by Defendant in his initial FRCP 12(b)(6) filing, videos of the attack for which Defendant Michael Polson was placed under citizen's arrest for felony sexual battery, **videos of the attack/incident are crucial to Court adjudication and evaluation by a jury as requested**. These facts are uncontested by all parties.
6. While Plaintiff's claims do not hinge solely on video evidence, videos' criticality is nonetheless demonstrated through Defendant's successful Motion to file one video of the incident despite Plaintiff's claims of it not being representative, likely altered, from a poor viewing angle, and with Defendant refusing to explain any of the reasonable questions listed above. The choice of a single video, its provenance and editing, and moreover **destruction** of other relevant and crucial videos, are at-issue (in addition to refusals to identify witness information).
    a. Defense Counsel was insistent that the one video filed would somehow exonerate Defendant at the plausibility motions phase; the Court did not agree, but agreed to accept its filing regardless.
    b. Defendant therefore concurs that video evidence is "crucial" to this case, which then begs the question, "if **one** video inclusive of all warts and other faults is agreed as crucial, then would not **all** nearby videos (with potentially better resolution, frame rates, and viewing angles, also be "crucial"?
        i. Moreover, Plaintiff communicated evidence preservation requests clearly, repeatedly, and to multiple parties including the Defendant himself

immediately after the attack/incident, plus Defendant's employer TSA, MWAA police (responders, supervisors, and Internal Affairs chief).

ii. Defendant's TSA coworkers' statements (See Exhibit B) affirm these statements including Plaintiff's repeated requests to Defendant directly.

iii. The obvious legal issues of "custody and control" are addressed below.

c. Plaintiff objected to filing of a single video as evidence based on unknown originality, lack of multiple other videos reasonably known to exist with much better clarity and camera angle, poor camera angle likely chosen by Defendant intentionally to "muddy the waters" for a Court and jury and infuse doubt throughout this case, chain-of-custody, potential editing and frame-rate down-sampling, reduction in resolution, and lack of the full video(s) of the incident (from multiple cameras) being filed. This was on June 22 and 23, 2017.

d. In Defendant's answers required under FRCP 26, he did not answer steps he had taken to attempt to preserve evidence in his control.

e. Defendant, TSA, and MWAA each had an obligation to preserve evidence pre-litigation when specific statements were made by Plaintiff (see Exhibit B) on 10 March 2016 immediately after the attack, and when promptly followed-up by written notifications. Failure to initiate litigation holds deprives all parties of good faith exceptions (Doe v. Norwalk Community College, 2007 U.S. Dist. (D. Conn., July 16, 2007)).

7. Airports today (particularly major airports such as Dulles, and even Reno in Plaintiff's diversity residence state of Nevada) have "security checkpoints … heavily populated with cameras" (see Exhibit F, article on surveillance and multiple cameras at Reno and Dulles airports). Not only is it implausible that ONLY ONE video would exist, but it is incumbent on Defendant to preserve all evidence within his control, and to allow Plaintiff and the Court to view, and for the Court to adjudicate relevancy and fields of view of videos, NOT the Defendant or third parties who include Defendant's employer (TSA), and airport police (MWAA) who also refused a litigation hold despite litigation against them by Plaintiff as first-party Defendants for refusal to take the arrested suspect (Defendant Polson) into their custody. No issues of 3rd party obligations exist.

a. Plaintiff rightfully claims that Defendant through direct communications and facing first-party legal action, as well as TSA and MWAA, each had a first party obligation to preserve ALL nearby video evidence, as well as to put preservation holds on ESI and other communication records, including emails, text messages, and social media accounts.
b. TSA and MWAA, while not named in this instant case, were verbally requested at the time of the incident on 10 March, PLUS explicitly requested via written requests (see Exhibit C) on 11 March 2016 to preserve video and other records.
c. TSA and MWAA were bound by requests directly to them, under the prospect of pending litigation, to ATTEMPT preserve all relevant evidence under FRCP 37(b) and 37(e) in order to maintain a "good faith" exception in case of spoliation.
d. Defendant might argue that he (as a TSA screener) might not know to request a litigation hold on video and other evidence.
e. However, the at-incident involvement of MWAA police and supervisors, and TSA 2nd, 3rd, and 4th level managers, PLUS the explicit written requests by fax to preserve evidence specifically called out in Exhibit C, and follow-up via phone calls to Defendant's supervisor Susan Callaghan of TSA (memorialized in her statement of potential litigation and the need to retain videos), and multiple MWAA personnel (MWAA supervisor Lt. Yeager, his commander Maj. Miller, and MWAA Internal Affairs Chief Lt. King) all point to a common bad faith and willful, knowing allowance of relevant and requested evidence to be destroyed, and then to claim that it never existed (as MWAA misleadingly stated to the Court it MWAA's Motion to Quash, leading to the Court's response. See Exhibit A).

8. Plaintiff has nevertheless, since the attack by Defendant, repeatedly requested all video evidence from Defendant, as well as 3rd Parties TSA and MWAA (together "third parties"), through meet-and-confers, FRCP 26 requests, and Court-approved subpoenas.
    a. Plaintiff has supplied and filed copies of requests to preserve all videos "within 50 feet of the attack," and showing all activities of Plaintiff and Defendant from initial meeting until departure of Plaintiff.

b. The Court-approved Rule 45 subpoena to MWAA includes the command "This shall include recordings from all cameras within 50 feet of the checkpoint, to show Plaintiff, Defendant, and interactions either had with any other person at all times during the incident, without interruption or editing so as to identify potential witnesses or actions of witnesses that might have interfered or interacted with Defendant when Defendant was removed from Plaintiff's view post-attack despite Plaintiff's requests to maintain visual observation of Defendant."

c. This Order of the Court was not obeyed, warranting sanctions under FRCP 37(2)A).

d. This request to preserve goes back to within 15 minutes after the attack, memorialized by both TSA and MWAA police attestations.

9. Plaintiff has gone above-and-beyond legal obligations to propose to Defendant and 3rd parties suggested Protective Orders, or even *en camera* reviews of Defendant's (or 3rd parties') evidence, in the interest of Sensitive Security Information ("SSI") to which Plaintiff is accorded access as a professional pilot and self-representing in this case.

   a. Counsels for Defendant, MWAA, and TSA ("all parties") have all refused to produce any video other than single poor quality and poor view angle video produced.

   b. All parties have refused any agreement (Protective Order, en camera, or any other method, together as "method") to which they would stipulate to allow production.

   c. All parties have refused any method that would even show where cameras were located as of the date of the incident, their fields-of-view, resolution of the cameras to demonstrate that the single video provided was in-fact at its original resolution (by simple means of the cameras serial #, installation order, product number, manufacturer's product specifications, and attestation and proof of the single filed video as being at the intended resolution and frame rate, and not altered in any way).

   d. It is hardly inconceivable that Defendant, TSA, and MWAA have sought plausible deniability by acting in bad faith and refusing to simply preserve the minimal evidence required in this case, and then only producing a single video without explanation or authority by which it was selected (when the selection of evidence

is not the purview of Defendants and such actions have consistently been found as worthy of sanctions as listed below).

10. Plaintiff's attempts above, with incontestably good faith, have attempted to find any reason for the multiple video recordings not having been preserved, or additionally, that their fields-of-view might somehow render them inapplicable and avoid this Motion.
    a. Plaintiff has been rebuffed, and no answers given to the two questions above.
    b. Defendant and third parties have repeatedly referred to "video footage" (see as an example Exhibit A, pg 3, par #2 (Defendant's Initial Disclosures under FRCP 26), but have not explained why only ONE VIDEO was produced.
    c. None of the Defendant or 3rd parties MWAA or TSA, have provided any evidence or proof of any attempt to preserve video evidence as requested, relevant, and as previously proven: crucial to this case.
    d. None of the Defendant or same third parties have provided any evidence as to why multiple groups (MWAA supervisor Lt. Yeager, his commander Maj. Miller, or MWAA Internal Affairs Chief Lt. King), all despite being informed of the need to preserve video and other evidence of a felony sexual battery crime, and all on recorded audio available to the Court if requested with Plaintiff's concern and requests that such ESI evidence be preserved (and intentionally re-requested, after the at-incident, plus next day, and then again within 20 days of the incident) so as to not be untimely after a later-affirmed 30-day window for "recycling" (aka destruction) of video and possibly other evidence might occur, and to exempt video evidence from regular destruction policies. Given the repeated requests to Defendant, and documented requests to other first parties (see Exhibit C) it is inconceivable that any explanation other than "bad faith" explains the deliberate and widespread efforts to deprive Plaintiff of reasonable Discovery crucial to Plaintiff's case, as admitted by Defendant as crucial in hearings before this Court.

LEGAL STANDARD (assessing whether spoliation and 37(e)(1) or 37(e)(2) sanctions are warranted, and to what level)

11. As this Court well knows, the Fourth Circuit does not require a showing of bad faith to warrant dismissal for spoliation (even though Plaintiff contends that bad faith is exhibited

in this instant case by Defendant) if the conduct is sufficiently egregious and the harm caused cannot be recreated (as it is with destruction of Defense-admitted crucial videos). Silvestri v. General Motors Corp., 271 F.3d 583, 593 (4th Cir. 2001) (applying federal law to a motion for spoliation and finding that while the offending party's conduct may have been either deliberate or negligent, the prejudice to the non-offending party by the failure to preserve key evidence necessitated dismissal); see also Rambus Inc., 439 F. Supp. 2nd uat 536 (—[S]ome instances of negligent spoliation will require dismissal [solely] because of the resulting prejudice to the defendant (or Plaintiff, rather, in this instant case).

12. Under FRCP 37(e) and Silvestri v. Gen. Motors Corp., 271 F.3d 583, 590 (4th Cir. 2001). A party seeking sanctions based on the spoliation of evidence must establish three elements:

    a. The spoliating party had a duty to preserve ESI, because litigation was ongoing or reasonably anticipated.

       Proof: To Defendant: requests at-the-time by Plaintiff to preserve all <u>videos</u> as affirmed by Defendant's TSA co-workers; To TSA and MWAA: requests at-the time by Plaintiff and affirmed by multiple timely written requests by fax to preserve all videos and other specific ESI. See Exhibits B and C.

    b. The spoliating party did not take reasonable steps to preserve the ESI or as Silvestri put it, the destruction or loss was accompanied by a "culpable state of mind".

       Proof: Defendant has not provided any proof of records retention as required under FRCP 26; TSA has provided only a single allegedly edited video and no proof of records retention in response to subpoena commanding "all reports by personnel involved with this incident and case" which MWAA confirmed would include any preservation of evidence requests; MWAA has affirmed and this Court has recognized (see Exhibit A, page 2, paragraph 2) that MWAA did not sent any requests for records retention, which is why the requested videos were destroyed. See Exhibit A. **<u>Allowing standard ESI destruction policies to destroy video evidence is also against case law from the Fourth Circuit in Silvesti, as Defendant, Defendant's numerous attorneys, the US Attorney, and</u>**

an expensive DC law firm should all have known. Their passively-permitted destruction of all but ONE POOR QUALITY (and likely altered) video can only be interpreted as invidious bad faith intended to deprive pro se Plaintiff of crucial evidence at trial.

c. The ESI was lost as a result of the spoliating party's (parties') failure to use reasonable efforts to preserve the ESI, cannot be restored or replaced through additional discovery, and the evidence that was destroyed or altered was "relevant" to the claims or defenses of the party that sought the discovery of the spoliated evidence, to the extent that a reasonable factfinder could conclude that the lost evidence would have supported the claims or defenses of the party that sought it.

Proof: Defendant in his FRCP 26 replies (See Exhibit D, page 3 of Exhibit, paragraph #2) confirms that he no longer possesses other than a singular video, already impeached due to camera angle, reduced frame rate and resolution, lack of provenance and failure to provide full video required under FRCP 160, etc. Since other videos at the checkpoint have long since been destroyed, they are not able to be recreated to satisfy Plaintiff's right for all local videos, but would have likely shown very clearly the excessive force used by Defendant during his felony sexual battery on Plaintiff, fully supporting Plaintiff's claims and making Defendant's rebuttals difficult, unconvincing, and unlikely to prevail at trial. Additionally, third parties MWAA and TSA have also not placed litigation holds on other videos, which cannot now be restored or replaced through additional discovery. Also, the burden imposed by Plaintiff's requests to preserve evidence were minimal (Defendant could just as easily have requested 12 videos to be retained instead of one, copies of emails and text messages for one person for at least a reasonable period after the incident would have been minimal, and saving of a social media page from Facebook – where Plaintiff verified that Defendant had an account – would also have been minimal.) Unlike Echostar, this is not an 80,000 email case! It is (was) likely 12 videos, a few hundred emails and texts (at most), and snapshot preservations of a Facebook page. These efforts would have

shown good faith, but none of them occurred, which is incongruous with the cost and resources of the law firms and lawyers opposing the pro se Plaintiff.

d. Accordingly, issuance of a default judgment in this case, given the repeated, clearly bad faith violations, the cruciality of the evidence destroyed, and proportionality of the Defense teams fundamental breach of obvious legal duties. Courts within the Fourth Circuit traditionally employ a four-part test for determining whether default judgment is a proper sanction under Rule 37:

   i. whether the noncomplying party acted in bad faith;

   ii. the amount of prejudice his noncompliance caused his adversary, which necessarily includes an inquiry into the materiality of the evidence he failed to produce;

   iii. the need for deterrence of the particular sort of noncompliance; and

   iv. the effectiveness of less drastic sanctions.

   BizProLink, LLC v.Am. Online, Inc., 140 Fed. Appx. 459, 462 (4th Cir. 2005). The use of this test—insures that only the most flagrant case, where the party's noncompliance represents bad faith and callous disregard for the authority of the district court and the Rules, will result in the extreme sanction of judgment by default.

13. If this Court does not concur that a dispositive default judgment in favor of Plaintiff is proportionally warranted, then the court "must only find that spoliator acted willfully in the destruction of evidence" to warrant adverse jury instructions. Goodman v. Praxair Servs., Inc., 632 F. Supp.2d 494, 519 (D. Md. 2009) Plaintiff contends this is the minimum sanction possible and is warranted considering the repeated, specific claims to retain, and the subjective, one poor quality video that was retained despite Defendant's "**control**" as discussed further herein.

14. Defendant and Plaintiff-notified third parties TSA and MWAA (who were notified as first parties facing potential litigation) were obligated to suspend any existing ESI/document destruction policies, which Defendant did not take good faith steps to request, and which both TSA and MWAA did not do as evinced by their lack of any litigation holds. The Fourth Circuit had held that a party has a duty to preserve evidence when it is placed on notice that the evidence is relevant (as happened immediately **and repeatedly** in this

instant case) to litigation or when the party should have known that the evidence may be relevant to future litigation. Silvestri v. General Motors Corp., 271 F.3d 583, 591 (4th Cir. 2001).

a. Per the Fourth Circuit in Silvestri, once a party reasonably anticipates litigation, it **must** suspend its routine document [ESI] retention/destruction policy and put in place a 'litigation hold' to ensure the preservation of relevant documents.
b. As Plaintiff has repeatedly proven, Defendant, and third parties TSA and MWAA, despite being directly and repeatedly notified with specificity as to the very limit set of ESI requested, did not take steps to preserve relevant documents, but DID take "a step" to preserve the ONE POOR QUALITY VIDEO to which Plaintiff contends was selected and/or down-sampled to intentionally deprive Plaintiff of clear-and-convincing evidence. Plaintiff contends this is textbook "bad faith."
c. In Broccoli, et al. v. Echostar Communications Corp. et al. 229 F.R.D. 506 (D. Md. 2005), Echostar did not suspend its email [ESI] 14-day destruction policy, and was accordingly sanctioned and found to have acted in "bad faith."
d. In Sampson v. City of Cambridge, Maryland, 251 F.R.D. 172 (D. Md. 2008), similar sanctions were imposed.

15. Current 4th Circuit case law fully supports Defendant's duty "to preserve documents [including ESI] that the party knew or should have known were, or could be, relevant to the parties' dispute." Blue Sky Travel et al. v. Al Tayyer Group, No. 13-2500 (4th Cir. Mar. 31, 2015), (citing Turner v. United States, 736 F.3d 274, 282 (4th Cir. 2013)
    a. A party may be sanctioned for spoliation if the party (1) had a duty to preserve material evidence, and (2) willfully engaged in conduct resulting in the loss or destruction of that evidence, (3) at a time when the party knew, or should have known, that the evidence was or could be relevant in litigation.
    b. Plaintiff claims in applying the 4th Circuit's analysis, that (1) the duty in this case started at the time of the incident when Plaintiff insisted (see Exhibit B) "I need a copy of all video of what happened" and further memorialized in requests to preserve evidence (see Exhibit C), (2) Defendant willfully engaged in conduct (not requesting a litigation hold, as proven by Defendant's disclosures, lack of production, and affirmation by MWAA and TSA of no litigation hold having been

relayed, and (3) at a time when Defendant knew (or should have known) that the evidence was or could be relevant in litigation, as exhorted not only in requests cited above, but also repeated in re-contacting Susan Callaghan (Defendant's second-level supervisor) and reminding her of Plaintiff's intent to pursue litigation and to preserve all evidence, and particularly ALL video evidence (since Plaintiff still did not have Defendant's name or contact information at that time).

16. Other 4th Circuit law further affirms severe spoliation sanctions when done in bad faith:

    a. Vodusek v. Bayliner Marine Corp., 71 F.3d 148 (4th Cir. 1995), The appellate court concluded that the district court acted within its discretion in permitting the jury to draw an adverse inference, supporting in this case (at least) a finding of adverse inference, if not default judgment for Plaintiff.

    b. In Thompson v. United States Dept. of Housing and Urban Dev. et al., 219 F.R.D. 93 (D. Md. 2003), certain defendants referred to as the Local Defendants failed fully to produce email [ESI, in the same category as video recordings in this instant case] records after the Court ruled that they were discoverable. Sanctions included adverse jury instructions (as requested here in the alternative) that the spoliating party could not use any of the unproduced evidence at trial, but that the non-spoliating party could use the evidence to support their case.

17. Were the checkpoint videos, test messages, emails, and social media pages in the possession, custody, or <u>control</u> of Defendant?

    a. Since third parties MWAA and TSA were contacted directly as potential first party Defendants (and a separate case related to failure to take custody of the arrested suspect is currently pending against MWAA), Plaintiff contends that they each had the obligation to take reasonable efforts preserve videos, emails, and text messages since they were properly noticed of the potential for litigation, however in this case, sanctions fall back upon Defendant Polson, since documents [ESI] that are potentially relevant to likely litigation "are considered to be under a party's control," such that the party has a duty to preserve them, "when that party has 'the right, authority, or practical ability to obtain the documents from a non-party to the action.'" Goodman v. Praxair Servs., Inc., 632 F. Supp. 2d 494, 515 (D. Md. 2009)

b. Clearly, Defendant had the control, authority and practical ability (as referenced above in Goodman) to request to his employer (TSA) or his co-workers (MWAA) or to his attorneys (TSA/DHS) that a litigation hold be place on the videos and other evidence in this case.

c. It is also a duty to notify the opposing party of evidence in the hands of third parties. Silvestriv. Gen. Motors Corp., 271 F.3d 583, 590 (4th Cir. 2001). If Defendant had reason to believe that any more than a single poor quality video was retained or could be retained, it was incumbent upon Defendant to advise Plaintiff of this possibility, to cooperate in a litigation hold. Defend failed in this obligation, and has provided no refuting evidence of this fact.

d. But for the individual capacity Defendant in particular, "control" in this context means "the legal right, authority, or ability to obtain upon demand documents [or ESI such as video] in the possession of another." American Rock Salt Co. v. Norfolk Southern Corp., 228 F.R.D. 426, 460 (W.D.N.Y. 2005)

The combination of cases below demonstrate individual Defendant's obligation and right, authority, or ability to have obtained the demanded ESI (or caused it to be retained as part of a litigation hold to support his defense). Since Defendant nor any of his multitude of counsels did this, he and they are correspondingly culpable for spoliation.

i. Rule 37(e) applies only to ESI "lost because a party failed to take reasonable steps to preserve it." Thus, the rule applies only to parties. The rule does not by its terms apply to spoliation by a relevant nonparty — or sanctions to be imposed on a party as a result of spoliation by a third party. If the third party is the agent or otherwise under the control of the party, logic dictates that the party is the actor within the meaning of Rule 37(e)and the rule therefore authorizes the imposition of curative measures or sanctions. This is consistent with prior spoliation case law, under which a party's responsibility for third-party spoliation is a function of the party's "control" over the spoliating third party. "Control" is often, but not always, determined by the breadth with which the phrase "possession, custody and control" in Rule 34 is construed.

ii. Defeating claims of Defendant that TSA and MWAA were not in his "control," United States v. Stein, 488 F. Supp. 2d 350 (S.D.N.Y. 2007) has held that if:

1. Party A serves a document demand on Party B.
2. Party B has the unconditional right, by contract, to obtain responsive documents held by Party C.
3. Held, the documents in the possession of Party C are in Party B's "possession, custody or control" within the meaning of Fed. R. Civ. P. 34).
4. This is similar to this case where Plaintiff is Party A, Defendant is Party B, and TSA and MWAA are Party C severally.

iii. See Cyntegra, Inc. v. Idexx Labs., Inc., No. CV 06-4170 PSG (C Tx), 2007 U.S. Dist., at *14–*15 (C.D. Cal. Sept. 21,2007) ("courts have extended the affirmative duty to preserve evidence to instances when that evidence is not directly within the party's custody or control so long as the party has access to, or indirect control over, such evidence").

iv. *Pegasus Aviation I, Inc. v. Varig Logistica S.A., 26 N.Y.3d 543* Failure to implement a litigation hold supports a finding of spoliation.

v. *Columbia Pictures, Inc. v. Bunnell*, 245 F.R.D. 443 (C.D. Cal. 2007) compelled the production of data stored on the third-party's servers, just as the individual Defendant in this case, would have the legal right, authority, or ability to obtain and preserve (or even request that the 3rd party TSA or MWAA preserve) videos of the incident.

vi. Defendant also had the legal ability to preserve his text messages and other ESI (including production of witheld information), even though they would be stored on his (and/or a TSA-issued phone), or by making a request to the wireless carrier or to his TSA supervisors, none of which he claims to have done.

vii. In Kiser v. Pride Communications, Inc., 2011 U.S. Dist. (D. Nev. 2011), the court compelled the defendant to produce its payroll and time-clock records, rejecting an argument that the defendant used a third-party payroll

vendor to process and maintain the data. In the court's view, it was "inconceivable" that the defendant lacked the ability to request – i.e., "control" – the records from this vendor. By the same reasoning, MWAA's or TSA's possession or custody of the videos and other ESI would still be the individual Defendant's "control."

viii. In Chura v. Delmar Gardens of Lenexa, Inc., 2012 U.S. Dist. (D. Kan. 2012), the court rejected the defendant's argument that it had no duty to produce system schematics that were kept by a third-party IT vendor. Rather, the court directed that "[i]f responsive documents are in the possession of its IT service provider but Defendant has authority or control over the documents, then Defendant has a duty to contact the IT service provider and obtain any responsive documents being maintained by the IT service provider." If Defendant had made a good faith effort to demonstrate an attempt to retain video and other ESI, then these attempts should have been produced. Instead, MWAA and TSA have affirmed in meet-and-confers that no such efforts were made.

ix. Defendant does not claim that he was unaware of his responsibilities to retain and take active steps to retain evidence, including litigation holds with any ESI providers, and requests for the same for any electronics issued by TSA (within his control).

x. Clear-View Technologies, Inc. v. Rasnick, No. 13-cv-02744-BLF, 2015 (N.D. Cal. May 13, 2015) sanctioned defendants for, among other things, having deleted relevant text messages and having "lost or thr[own] away" several mobile devices (including iPhones and an iPad) used to access relevant communications and documents. See id. at *5. The case reflects that where unique and relevant electronically stored information is contained in text messages and stored on mobile devices, courts increasingly will hold parties responsible for their preservation.

xi. In accordance with Clear-View, Plaintiff contends that a default judgment for Plaintiff is appropriate given the severity and ample notice to preserve given to Defendant, as well as third parties TSA and MWAA.

18. As is well-known, the keys to the Court's evaluation of Defendant's alleged spoliation are "reasonableness" and "good faith."

    a. Defendant Polson does not appear to have made any attempts to preserve evidence, thereby violating both the reasonableness and good faith aspects.

    b. Polson has not demonstrated where he requested a litigation hold from either TSA or MWAA, or made <u>any</u> attempt to work with those who might do so (if he, despite being advised by TSA/DOJ/DHS was unable to figure out what the pro se Plaintiff was able to understand).

    c. "[A] party responding to a Rule 34 production request is under an affirmative duty to seek that information reasonably available to it from its employees, agents, or other subject to its control." A. Farber & Partners, Inc. v. Garber, 234 F.R.D. 186, 189 (C.D. Cal. 2006). Defendant Polson did not demonstrate any affirmative actions to seek to retain the crucial video evidence available to him.

    d. "An earmark of a recipient's <u>inadequate</u> inquiry is the obvious absence of documents and other written materials that the recipient reasonably would be expected to have been retained in the ordinary course of its business." Meeks v. Parsons, 2009 U.S. Dist. LEXIS 90283, 2009 WL 3003718, *4 (E.D. Cal. Sept. 18, 2009) (citing A. Farber & Partners, 234 F.R.D. at 189). By not having any responsive production (other than the single, poor quality video already described as suspect), Defendant Polson appears to have made inadequate inquiries to retain evidence, portraying bad faith in his obligations to preserve [ESI] evidence as required under FRCP 37(e).

    e. If the roles were reversed, and Plaintiff had committed an alleged felony sexual battery upon Defendant for which Plaintiff were arrested, Plaintiff would clearly have sought all potential evidence to exonerate himself. It does not stand to reason that Defendant, especially with all the free legal resources available to him, did not take the most simple of steps to preserve just a few more DVDs to show good faith and reasonable efforts to avoid spoliation.

19. FRCP 37(e)(2) limits the ability of courts to draw adverse inferences based on the simple loss of information, permitting them only when a court finds that the information was lost with the intent to prevent its use in litigation.

a. However, in this case, Defendant (and third parties TSA and MWAA) **did** manage to preserve a single video recording, which raises the question:
If Defendant, TSA, and MWAA were able to preserve <u>one</u> video with a terrible viewing angle and poor quality and likely misleading evidence for a jury, then why wouldn't they preserve <u>all</u> nearby videos, if only to show that the poor quality and angle selection was still the best of the alternatives? Or better yet, to find a better quality and more representative view of events?

   i. None of Defendant, TSA, or MWAA have offered any response or justification of this decision, nor of the similar (if less crucial) decision not to retain emails, texts, or social media.

   ii. As a senior captain and aircrew flight instructor, Plaintiff can also speak to the technically sound reason for preserving multiple videos, even if all were of poor quality, since they would likely show different views, with different resolutions or interleaved frame rates (when compared to each other). The effect would be what pilots call "vote and decide" which is why aircraft have 3 of the most critical instruments such as Artificial Horizons and altimeters. If there is a disparity of evidence (or instrumentation), pilots look to see if two out of three instruments "agree" (that is, reflect the same results), and based their decisions on this.
   Plaintiff asks why, IF the intent was to find out the <u>truth</u> about Plaintiff's claimed use by Defendant of excessive force, why ALL evidence would not have been maintained to similarly provide a variety of angles, views, resolutions, etc., to impart and permit the most thorough, meritful, and fair adjudication? It just seems too convenient, and too obviously risky in hoping that pro se Plaintiff might not move for spoliation sanctions, to not preserve all video and other ESI evidence, UNLESS Defendant (with MWAA and TSA) realized that other video(s), or even the single selected video when viewed without editing and down-sampling of video, would serve to support Plaintiff's case instead of Defendant's. But it seems like Defendant's (and TSA's and MWAA's) "dream team" of US Attorneys and other ostensibly world-class lawyers decided to blatantly ignore clearly

establish 4th Circuit precedent and conduct/acquiesce to bad faith spoliation against the pro se Plaintiff.

iii. The only logical conclusion was (as Plaintiff has suggested) for Defendant and noticed third parties TSA and MWAA to intentionally choose a "doubtful" video as leverage for a jury (to instill doubt), but to in bad faith prevent other evidence from its use in litigation, precisely as FRCP 37(e)(2) authorizes dispositive sanctions to dissuade.

iv. As the Fourth Circuit has held was looking to whether behavior can be excused or is worthy of sanctions, in the issue of FRCP 11 sanctions, has been to look to "reasonableness" and not merely "good faith".

v. Plaintiff suggests that given the extensive US Attorney and similar Defense and third parties represented in this case, that this Court look not only to the individual capacity Defendant, but also to the quantity and likely quality of legal counsel he should have received, which would have induced him to reasonably and in good faith preserve ESI in his control, which he did not do.

1. The Fourth Circuit has recognized that in deciding whether a Rule 11 sanction (as opposed this instant case's Rule 37(e) sanction) is to be applied, the court must apply a standard of —objective reasonableness. See Cabella v.Petty, 810 F.2d 463, 466 (4th Cir. 1987) (stating that the inquiry is **whether a reasonable attorney in like circumstances could believe his actions to be factually and legally justified**) (emphasis added); Cleveland DemolitionCo. v. Azcon Scrap Corp., 872 F.2d 984, 987 (4th Cir. 1987); see also Lake Wright Hospitality, LLC v. Holiday Hospitality Franchising, Inc., Civ.Action No. 2:07cv530, 2009 U.S. Dist. at *9 (E.D. Va. Aug. 20, 2009).
2. It is facially implausible in this instant matter of evidence spoliation that any reasonable attorney, much less a US Attorney such as Dana Boente, or Assistant US Attorneys Murley, Sylvertooth, or Barghaan, or the more-than-competent other

TSA/DHS attorneys with whom Defendant lists as additional counsel, or MWAA attorneys, 9+ total attorneys in all, would ALL have reasonably not taken any steps to preserve ESI in this case, nor to have advised Defendant Polson to have taken similar good faith legal preservation actions.

3. Given the huge amount of legal horsepower lined up against Plaintiff, it is only reasonable to conclude bad faith and fear as motivating Defendant's (and third parties TSA's and MWAA's) refusal to their duties to preserve and relay ESI necessary and crucial to this case, to Plaintiff.

SELECTION OF APPROPRIATE SANCTIONS

20. In order to impose sanctions, the court must find evidence as to the second element, that any destruction or loss of documents [ESI] took place with a "culpable state of mind." The three possible states of mind that satisfy this requirement are bad faith destruction, gross negligence, and ordinary negligence.
    a. The Fourth Circuit requires only a showing of fault, with the degree of fault impacting the severity of sanctions. Silvestri, 271 F.3d at 590.
    b. The Fourth Circuit has established guidelines for when the most severe sanctions, namely adverse inference instructions and sanctions that dispose of a case such as a default judgment or a dismissal, are appropriate, taking into consideration the spoliator's level of culpability.
    c. As noted, the third element of the test for imposition of sanctions for spoliation is that the lost documents [ESI] are relevant to the proponent's claims and defenses. A failure to preserve documents in bad faith, <u>such as intentional or willful conduct</u>, alone establishes that the destroyed documents were relevant. The reason relevance is resumed following a showing of intentional or willful conduct is because of the logical inference that, when a party acts in bad faith, he demonstrates fear that the evidence will expose relevant, unfavorable facts.
    d. Plaintiff does not equate intentional or willful to bad faith; merely, that they are related where bad faith is inclusive of intentional or willful conduct (this reflects

case law). However, Plaintiff has demonstrated bad faith by Defendant, by not only his failure to preserve evidence, but his specific and active selection of a particular ESI video to retain, outside of his authority to select, which is of dubious provenance and doubt-inducing quality. As stated, if Defendant could preserve ONE POOR QUALITY video recording, he could certainly have preserved a dozen. The marginal effort and cost differential are negligible. And in that case, he could also have preserved a few hundred emails, text messages, and social media pages.

e. Plaintiff has already demonstrated Defendant's (and third parties TSA's and MWAA's) duty to preserve ESI. No explanation or good faith safe harbor has been proferred, much less demonstrated, Defendant has been shown via case law to have had "control" to retain (or have retained for him) relevant ESI as requested. Therefore, it can only be inferred that Defendant did indeed act in bad faith, and that sanctions to the level of a Default Judgment for Plaintiff are relevant and proper.

f. The district court must consider both the spoliator's conduct and the prejudice caused and be able to conclude either (1) that the spoliator's conduct was so egregious as to amount to a forfeiture of his claim, or (2) that the effect of the spoliator's conduct was so prejudicial that it substantially denied the defendant (Plaintiff in this case) the ability to defend. Silvestri, 271 F.3d at 593.

    i. Plaintiff claims both elements, whereas Defendant (in coordination with his numerous US Attorney DOJ counsels, TSA and their attorneys, MWAA and their attorneys) would all refuse to put litigation holds on evidence in violation of their duties under Silvestri, are unconscionable and demonstrative of textbook "bad faith" to attempt to impair Plaintiff's proper adjudication out of fear (as stated above) of Plaintiff's warranted and rightful claim to excessive force by Defendant in a search.

ii. In the second element, Plaintiff claims that intentional abrogation and dereliction of duty by the Defendant, US Attorneys, and others experience counsel and parties, all combine to produce so prejudicial a result that it has substantially denied Plaintiff the ability to provide crucial evidence

admitted by Defendant and his counsels as crucial to the case (which is why they chose ONE POOR QUALITY video recording to stand-in as a half-hearted and intentionally misleading token of evidence.

21. If the Court agrees that ESI information was lost to prevent its use in litigation (as Plaintiff claims), then the question becomes one of appropriateness of sanctions, based on the harm done, and ability to recover any of the spoliated evidence.
    a. The evidence is unfortunately, unable to be reproduced, as it was video evidence, and both the common Defendant Counsel for Defendant and TSA, and MWAA's counsel, have all assured Plaintiff that no copies remain.
    b. Plaintiff has already proven that video evidence, especially complimentary and confirming evidence from other view angles or resolutions/frame rates, could be critical and substantial to Plaintiff's case.
    c. Defendant's spoliation of this critical evidence, therefore, warrants the Court to sanction Defendant via a Default Judgment in favor of Plaintiff, along with other monetary, declarative, and injunctive sanctions as listed below.

OPTION I: DEFAULT JUDGMENT SANCTION

22. If the Court finds that spoliation did occur, and WITH the **bad faith** intent to obstruct its use in litigation, then Plaintiff requests default judgment in favor of Plaintiff, still inclusive of separate monetary, declarative, and injunctive sanctions as requested.
23. Monetary sanctions in this option would be for the full requested and supported amount of $30.8M, declarative sanctions that Plaintiff was the victim of excessive force used by Defendant in violation of Plaintiff's 4th Amendment rights, that an injunctive sanction that Defendant be ordered to cooperate with Plaintiff to assist in identifying all 3rd parties who might help Plaintiff in requested monetary reimbursement.

OPTION II: ADVERSE INJURY AND JURY INSTRUCTION SANCTION

24. If the Court finds that spoliation did occur, but without the bad faith intent to obstruct its use in litigation, then Plaintiff requests two adverse jury instructions severally preventing Defendant from arguing that excessive force was not used by Defendant against Plaintiff, and affirming that destroyed evidence supports Plaintiff's claims, still inclusive of separate monetary, declarative, and injunctive sanctions as requested.

25. If this less severe sanction of adverse jury instructions is warranted, then Plaintiff also prays for monetary relief at 25% of the amount sought (25% = $7,700,000), with the same injunctive sanction that Defendant be ordered to cooperate with Plaintiff to assist in identifying all 3rd parties who might help Plaintiff in requested monetary reimbursement.

SUGGESTED ORDER FOR DEFAULT JUDGMENT AND SANCTIONS

For good cause as demonstrated herein, pro se Plaintiff is proportionally GRANTED judgment in DEFAULT against Defendant Michael Polson for Defendant's bad faith spoliation of evidence in violation of FRCP 37(e)(2).

Additionally, Defendant is ORDERED to pay to Plaintiff the sum certain requested of $30.8M, and to cooperate with Plaintiff to assist in identifying all 3rd parties who might help Plaintiff in requested monetary reimbursement.

It is so ORDERED. Date: _____ Hon.: _____

SUGGESTED ORDER FOR ADVERSE JURY INSTRUCTIONS AND SANCTIONS

For good cause as demonstrated herein, pro se Plaintiff is proportionally GRANTED approval of two jury instructions to be provided against Defendant Michael Polson for Defendant's bad faith spoliation of evidence in violation of FRCP 37(e)(1).

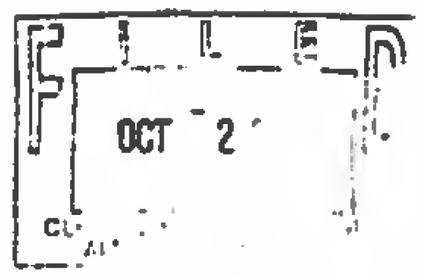
1. Defendant is prevented from arguing or presenting evidence that excessive force was not used by Defendant against Plaintiff; and

2. the jury (and Court in any earlier Motions) shall be instructed to AFFIRM that evidence destroyed on willfully not retained by Defendant supports Plaintiff's claims of excessive force in violation of the 4th Amendment.

3. Additionally, Defendant is ORDERED to immediately and within 30 days of this Order to pay to Plaintiff the sum certain requested amount of $7,700,000, and to cooperate with Plaintiff to assist in identifying all 3rd parties who might help Plaintiff in requested monetary reimbursement. This monetary amount is only intended as a result of sanctions for spoliation, and does not satisfy or remove any additional or remaining liabilities or claims by Plaintiff against Defendant.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division



JAMES LINLOR,

Plaintiff,

v.

MICHAEL POLSON,

Defendant.

Civil Action No. 1:17cv0013 (AJT/JFA)

ORDER

On September 13, 2017, non-party Metropolitan Washington Airport Authority ("MWAA") filed a motion to quash and objections to a subpoena to produce documents that was issued by the Clerk of Court on August 21, 2017. (Docket no. 105). In the memorandum in support of the motion to quash, MWAA states that subpoena was served on September 6, 2017 and required a response in nine days, on September 15, 2017. MWAA also objected to producing the documents at the Clerk's office as an undue burden. The MWAA then asserts specific objections to the subpoena stating that it has previously produced the only video in its possession capturing the plaintiff, defendant, or the events that form the basis of plaintiff's lawsuit against Mr. Polson and that it has also provided the plaintiff with the other information he seeks through responses to FOI requests and in discovery in a previous lawsuit against MWAA.

Plaintiff's opposition filed on September 19, 2017 (Docket no. 111) details numerous concerns about the completeness of the materials he has obtained through his FOI requests and earlier discovery responses and states that MWAA had indicated it would provide him with some additional documents. Plaintiff suggested that the time period for production be enlarged up to

and including September 27, 2017, and if the materials received by that date were not sufficient, he be allowed to file a motion to compel. (Docket no. 111 at 9).

MWAA's reply filed on September 22, 2017 (Docket no. 113) states that some additional materials were sent to the plaintiff on September 19, 2017. The reply further confirms that MWAA has provided the plaintiff with the only video in its possession, that no internal record retention letters were sent, that no other reports exist that have not been provided to the plaintiff, and that the emails relating to plaintiff's request for an Internal Affairs investigation have been produced but that no investigation was conducted. Given that MWAA has responded to the subpoena and provided the plaintiff with responsive information, it is hereby

ORDERED that motion to quash is denied as moot. Plaintiff may, if he deems it appropriate following a good faith consultation, pursue a motion to compel if he believes MWAA has materials in its possession that are responsive to the subpoena that have not been produced.

Entered this 2nd day of October, 2017.

/s/ JFA
John F. Anderson
United States Magistrate Judge

Alexandria, Virginia

John F. Anderson
United States Magistrate Judge

EXHIBIT B

Affirming statements of citizen's arrest claimed by Plaintiff Capt. Linlor for felony sexual battery by Defendant Michael Polson AND for **requests for preservation of video made in Defendant Polson's presence on 3/10/16, as affirmed by Defendant's coworkers**. Statements are also affirmative of a citizen's arrest under Defendant's statements through case law holding that the transfer-of-custody of a demonstrated felony battery suspect must occur after a valid citizen's arrest. Full statements from Polson, Whetsell, Johnson, and Callaghan follow this summary to demonstrate obligations to preserve evidence by Defendant Michael Polson, and TSA, and MWAA (none of whom issued litigation holds)

- Meyers v. Redwood City (9th Cir. 2005) 400 F.3d 765, 772
- Kinney v. County of Contra Costa (1970) 8 Cal.App.3d 761, 769
- Wang v. Hartunian (2003) 111 Cal.App.4th 744, 750 ["[T]he police were in fact obligated to take custody of Wang merely at the direction of Hartunian, that is, when Hartunian informed the police that he had arrested Wang."]; Kesmodel v. Rand (2004) 119 Cal.App.4th 1128, 1137

Summary of Statements of 10 March 2016 submitted by TSA under Subpoena:

PERSON	ESSENCE OF STATEMENTS MADE UNDER OATH
Michael Polson (Defendant)	Mr. Linlor asked for police to be called so he could file charges for sexual assault by Michael Polson. Bill Whetsell called police at Linlor's request.
William (Bill) Whetsell STSO (2nd level mgr) (Defendant's supervisor)	I heard passenger Linlor state that TSO Polson had forcibly hit him in the testicle [sic] during the pat-down. I asked if the passenger would like to speak with the police as he had stated sexual assault. He said that he would like to speak with the police. **Passenger Linlor stated that he was placing TSO Polson under citizen's arrest for felony sexual assault**.
Scott Johnson (FSO) (big boss, 4th level mgr)	Received text message of incident (not previously disclosed or retained despite specific request to retain ESI) Passenger says TSA agent sexually assaulted him **Passenger said, "I invoke my right to make a citizen's arrest."**
Carl Johannes (TSM) (3rd level mgr)	Passenger claims he was sexually assaulted by TSO Michael Polson **Mr. Linlor states, "I need a copy of all video of what happened."**

Susan Callaghan (TSM) (3rd level mgr) (Obstruction of evidence): (TSA FSO complicit in obstruction of evidence = BAD FAITH)	Passenger claims he was sexually assaulted by Officer Polson **Mr. Linlor asked MWAA for the video and they said they did not have it; they viewed TSA's cameras.** (Scott Johnson FSO had arrived at this time.) Mr. Linlor indicated to Scott Johnson that Mr. Linlor requested to make a citizen's arrest of TSO Polson. STSO William Whetsell said that the passenger had requested police, and that Whetsell had made that request through the ICC. MWAA officers told Linlor he would have to go to the courthouse and file a complaint to press charges.

(Note that Linlor did this, with Loudoun Magistrate Court coordination three times in Leesburg on the record, and was refused by three Loudoun County Magistrates to accept a complaint, despite awareness of the Chief Magistrate and his orders that the other Magistrates should accept a complaint from Linlor.)

Leila Aksalic (Lead Agent)	Linlor claimed he was sexually assaulted during pat-down. Accused TSO Polson of sexual assault.
Joseph Hoffman (IAD)	Linlor said he had been sexually assaulted.
TSOC narrative	Passenger claims TSO forcibly hit him in a sensitive area **Passenger attempted to claim citizen's arrest against the TSO making the pat-down**

Statement of Defendant Michael Polson (2 pages of narrative plus signature page)

I, Michael G. Polson, am a Transportation Security Officer (TSO) at Dulles International Airport (IAD). On 10-March 2016 I was working a 0600-1200hrs shift at Lane 50/51. At approximately 1140hrs, I was working as a Dynamic Officer (DO) and responded to a call for, "Male opt-out, side door." The following narrative is of the incident that followed.

I approached the side door and saw a Caucasian male, approx. 40 y/o, 6ft 2in tall standing by the divesting belt. I asked him if he had any items in his pockets, to ensure he had fully divested and submitted everything for x-ray screening prior to me admitting him to the sterile area. He admitted to having a wallet that he refused to separate with, due to it having his "Federal Officer credentials" and he wanted to keep them on his person at all times. I explained that his wallet had to be submitted for screening, but he could take his credentials out and keep them in his hand if he wished. He refused, so I called for a lead. LTSO George was the lead for my lane and responded. George explained the same process I did, but he continued to refuse, so George left to notify STSO Bill. At this time, the passenger became frustrated that his property had gone through and he had "lost effective control of [his] items." While George was talking to Bill, I managed to explain that I could screen his credentials individually if they were removed from the wallet and the passenger decided to take all items out of his wallet (ID's, Credit Cards, and Cash) and then proceeded to submit his wallet to x-ray screening.

Once I was sure he had divested all items, I escorted him through the side door and explained I would be taking his possessions from the x-ray belt to the side table, where the pat-down would take place. He had six items and I was working alone, so I made three different trips back and forth. Once all items were on the table by the windows of Lane 50/51, I had him stand on the foot mat so he could see his property and began to give him his advisements. I had not yet screened his wallet items, so I asked to see them and he refused until I had changed my gloves. I changed my gloves and then screened his items, noting a Common Access Card (CAC) from the Department of Defense (DoD) identifying him as a civilian contractor for the U.S. Navy. No other federal documents were present. I asked if I could place the items on the table behind me after I had done a visual and physical inspection, but he refused and requested he hold them throughout the process. I gave all the items back to him and began his Standard Patdown advisements, using hand gestures in the air to demonstrate all hand movements required to clear the sensitive areas and inner thigh. During my advisements he identified that he could only raise his right arm to 30degrees, but had full capability otherwise. I acknowledged his abilities and I asked if he had any questions for me. Upon receiving the confirmation that he did not, I began.

I started behind him on his collar and then proceeded down his left, followed by his right arm. I then proceeded to clear his back, waistband, buttocks, inner thigh, the back of both legs, and his ankles/heel. I came around the front and advised him to lower his arms, then cleared the front of his collar, chest, waistband, groin, front pockets, and right inner thigh. Upon clearing the left inner thigh, I went up to where his leg meets his torso (body resistance as required by SOP) and he jumped backwards off the mat. I do not remember the exact quotes he stated, but it brought the attention of my supervisor, STSO Bill, who had been working three feet away, over. Bill asked the passenger what happened and the man requested police be brought so he could file sexual assault against me. Bill complied and requested MWAA respond to Lane 50-51. Upon hearing over the police request over the radio, two Transportation Security Managers (TSMs) responded from their nearby offices. They arrived before MWAA and asked

POLSON000001

the passenger what happened. He explained his side and continued to berate my actions. One of the TSMs requested I leave the area and wait elsewhere to separate the two of us, but the passenger said he wanted to keep me right there so that, "no side-line conversations could take place." The TSM had me step away around a nearby corner. MWAA arrived around this time, and started to question the passenger on his side of the story. They then came over to me and I explained that I had been completing a check of the inner thigh as required in the SOP. The police and TSM's went into the manager's office and reviewed video of the incident. Approximately three minutes later, they came back out and one TSM assured me I had done everything per SOP and had nothing to worry about. I was dismissed and clocked out at approximately 1230hrs.

VERIFICATION

I, Michael Polson, verify under oath, that the interrogatory responses to Plaintiff's First Discovery Requests are true and accurate, to the best of my knowledge, information, and belief.

Michael G Polson

Signed

11 Sept 2017

Date

Statement of William (Bill) Whetsell, STSO (2nd level supervisor and Defendant Polson's supervisor)

Statement of events from 3/10/16 at Lane 50/51.

On Thursday March 10, 2016, at 1153 I was working at the ETD machine located on the sterile side on lanes 50/51. Transportation Security Officer (TSO) Michael Polson was performing a standard pat down on passenger James Daniel Linlor, who had opted out of the body scanner. I heard passenger Linlor state that TSO Polson had forcefully hit him in the testicle while performing the pat down. I turned around to observe the situation, and the passenger requested to speak to a supervisor. I stated that I was the supervisor and asked how I could assist. The passenger again stated that TSO Polson had hit him in the testicle while performing the pat down and stated that it was sexual assault. The passenger stated that he did not want TSO Polson to complete the pat down. I asked if the passenger would like to speak with the police as he had stated sexual assault. He stated that he would like to speak with the police. I notified the Incident Coordination Center (ICC) at 1155 and requested Metropolitan Washington Airports Authority (MWAA) Police Department (PD). TSM Susan Callaghan and TSM Carl Johannes arrived at lane 50/51 and spoke with the passenger.

MWAAPD arrived at lane 50/51 at 1200. MWAAPD spoke with passenger Linlor. TSM Callaghan and TSM Johannes took MWAAPD to view the video of the incident. After returning MWAAPD again spoke with passenger Linlor and stated that they would not be filing a report. Passenger Linlor asked that the videos be placed into an evidence chain of custody and that video of the MWAAPD officers watching the video of the incident be placed into an evidence chain of custody as well. Passenger Linlor again requested that MWAAPD place TSO Polson under arrest for felony sexual assault. MWAAPD again denied the request. Passenger Linlor then stated that if they would not place him under arrest, then he would be placing TSO Polson under citizen's arrest for felony sexual assault. MWAAPD again denied his request. Linlor requested the names of the MWAAPD officers and stated he would be filing a complaint for failure to perform their duties. Linlor also requested my name, I wrote Supervisory Officer Whetsell on a card for him. Federal Security Director (FSD) Scott Johnson had arrived on scene and spoke with passenger Linlor, however Linlor stated he would not be speaking with FSD Johnson.

MWAAPD stated that they were complete in their work with passenger Linlor. I informed passenger Linlor that I would then have to complete the screening that had not been completed earlier. I advised Linlor of the need for a standard pat down. I gave Linlor all of his advisements prior to beginning the pat down, I asked if we had any sensitive or sore areas and Linlor stated that his shoulder was sore and he could not lift his arm above 30 degrees. I asked if Linlor would like a private screening and he declined. I performed a standard pat down and tested my gloves using the explosive trace detection (ETD) machine. There was no alarm. The passenger was cleared and allowed to continue to his flight.

As stated by Supervisory Transportation Security Officer William Whetsell

Statement of Susan Callaghan, STM (3rd level supervisor and supervisor of William Whetsell, Defendant Polson's supervisor)

On Thursday March 10, 2016 at approximately 11:55 I TSM Susan Callaghan responded to a call at Lane 50/51 for an unruly passenger. When I arrived I introduced myself to the passenger and asked if there was something I could do to assist him. Passenger Linlor stated that he had been sexually assaulted by officer Polson. I was told by STSO William Whetsell that the passenger had requested MWAA and that STSO Whetsell had made the request through ICC (Incident Command Center) TSM Johannes arrived at Lane 50/51 a moment after I did and since the passenger was berating the officer, TSM Johannes asked Officer Polson to step away from the area Passenger Linlor objected to this because he did not want Officer Linlor to be coached on what his responses to law enforcement should be. TSM Johannes stated to Passenger Polson that he was not having his officer berated for performing his job that Mr. Polson could speak with him (TSM Johannes) Mr Polson stated he did not wish to speak with TSM Johannes and wanted the officer to stay where he was. I then stated to Mr. Polson that when law enforcement arrived they would want to speak with all involved separately, so it would be best to have Officer Polson step away but stay in view Mr. Linlor concurred this was an acceptable solution.

MWAA (Metropolitan Washington Airport Authority) Police officers arrived about 12:00. I spoke with Officer Mitchell to explain the situation Officer Mitchell then spoke w th Mr Carlson and her partner spoke with Officer Polson. TSM Johannes and the officer then went to the manager's office to review CCTV. Officer Mitchell goes to the office to review what was on camera I entered the room after both officers had viewed the video The officers conferred with each other and concurred there had been no assault committed. The MWAA Officers then went back out to lane 50/51 and stated to Mr. Linlor that there were no violation that could be seen and they would not be charging Officer Polson. Mr. Linlor then stated he wanted to press charges and the MWAA officers told him he would have to go to the court house and file a complaint to press charges Mr. Linlor asked MWAA for the video and they stated they did not have it, they viewed TSA s cameras FSD Scott Johnson arrived at this time and spoke with Mr Linlor. Mr Linlor stated he did not want to speak with FSD Johnson. During this time I was still standing by the ETD at lane 50/51 with TSM Flick who had arrived about the same time as the FSD While Mr. Linlore spoke with FSD Johnson, he requested to make a citizen's arrest of Officer Polson. MWAA declined to make this arrest. FSD Johnson concluded his conversation and walked to another area of the checkpoint.

Mr. Linlor was advised that he would still need to finish the screening process. STSO Whetsell then proceeded to conducting a Standard Pat Down While STSO Whetsell was conducting the pat down Mr. Linlor asked TSM Flick for the video information to which she replied that she did not have the information. STSO Whetsell completed the pat down and told Mr. Linlor he was free to continue on with his travel. Mr. Linlor started gathering his belongings and asked TSM Flick to write down her contact information. TSM Flick stated to Mr Linlor that she was not writing down anything. Mr. Linlor then stated "Why are you illiterate? Mr. Linlor then asked me for the video and I told him we did not have that information. TSM Flick and I then walked away from the area. When Mr. Linlor was leaving the checkpoint he walked over and requested my business card which I gave to him.

Susan Callaghan
March 8, 2016

Statement of Scott Johnson (4th level supervisor, and supervisor of Susan Callaghan, William Whetsell, and Defendant Polson)

At approximately 1100 on Thursday, March 10 2016, I received a text message on a passenger at lanes 50/51 who claims the TSA agent sexually assaulted him, with Metropolitan Washington Airport Authority police in route.

When I arrived, I noticed an individual standing by himself with three MWAA Police Officers around him, in addition to the TSA Supervisor William Whetsell. I stood back from any conversation but noticed the passenger was upset and was demanding the names of everyone around him; asking for calling cards from the police officers and from the TSA Supervisor.

The TSA Supervisor said he did not have a card, but would offer the passenger his name. After the Supervisor gave the passenger his name, the passenger then said that he wanted the Supervisor's first name as well.

At this point, I approached the passenger and said that the Supervisor does not need to give his first name. The passenger said "And who are you?" I told him my name and position. He said "What are you like the boss here?" I said I am the Federal Security Director responsible for the security at the checkpoint and that in order for him to fly he would need to complete the screening process.

He then asked me for a Card, which I did not have, but I did write my name and position on the back of a card for him. He asked me for my phone number and I said that if he wishes to file a complaint he can go to TSA.GOV to get the process.

The passenger kept demanding that the officer who performed the pat down be arrested for sexual assault. I told the passenger that since he opted out of the AIT, we must follow the standard operating procedures to complete the screening process.

MWAA PD refused to arrest the TSA Officer, so the passenger said words to the affect "fine, if you will not arrest him, I invoke my right to make a citizen's arrest. I want you to arrest that TSA Officer." MWAA PD said no!

At some point, the Passenger said he did not want to talk to me anymore, but I did tell him one more time that if he wanted to fly, he would have to complete screening.

After what seemed like 30+ minutes of talking, the passenger finally agreed to another pat down by STSO Whetsell. MWAA PD and I watched the pat down. The passenger gathers his belongings, recomposed and departed the screening area.

A TSOC incident report was filed

Thursday, 03/10/2016, IAD - Washington Dulles International
• TSA PreCheck passenger opted out of AIT screening at a standard lane; TSO began pat down process; Passenger alleged TSO forcibly hit him in a sensitive area as TSO began to pat down upper part of inner thigh
• Metropolitan Washington Airports Authority responded: Passenger attempted to claim citizen's arrest against TSO conducting pat down
• FSD and Senior Staff responded to the checkpoint; investigated passenger's allegations;
• Passenger complied with screening process; Screening completed, negative results
• CCTV was reviewed by TSA with Conclusive results; TSO conducted procedures as required

• Southwest Airlines [illegible] (IAD-DEN)
• TSA PreCheck [illegible] NCIC Not Warranted. Decision on [illegible] is pending. [illegible]
[illegible]

14 MAR 2016

EXHIBIT C

Records retention requests to MWAA and Defendant's employer TSA sent the day after the attack. At this point (10 March 2016), TSA and MWAA were still refusing to release the arrested suspect's name (Defendant Michael Polson).

March 09, 2017 Fax REDACTED
Follow-up notice:
Due to continuing pending litigation, you are requested to continue to retain all data requested below for a period of not less than 1 year (or longer upon request) from March 9, 2017.
Capt. J. Linlor

ADDRESS REDACTED
March 11, 2016

DHS/TSA General Counsel
Fax 202-282-9186

Dulles Police Department
Att: Lt. Yeager
Fax 703-572-2802

Dulles TSA
Att: Ms. Susan Callaghan
Fax 703-661-6461

NOTICE TO PRESERVE RECORDS PENDING LITIGATION – INCIDENT OF THURSDAY, MARCH 10, 2016

Gentlemen:

You are requested to ensure compliance with this request, and to ensure retention of the following items, for a period of not less than 1 year (or longer upon request) from March 10, 2016. I was the victim of a non-SOP compliant pat-down by a TSO in the Pre-Check area at Dulles airport, resulting in injuries to me at the felony level. You are requested to communicate this request as appropriate and necessary to all necessary individuals for compliance with this request, and to track to whom this request is communicated, and what information each individual provides, or if any individuals are not able to provide information or are non-responsive.

Please retain and secure:

- All video and audio footage in its original format (along with metadata), between the period from 11:30am through to 1:00pm on Thursday, March 10, 2016 (henceforth "the period", from ALL video cameras and recording devices in the pre-check area.
- All radio calls to/from LEOs Solo and/or Mitchell, or related to this incident during the period, in their original format along with metadata.
- All TSA/DHS radio calls, access control logs at this checkpoint, GPS tracking of personnel or devices, communicated in any format or media, related to this incident during the period, in their original format along with metadata.
- All text messages or emails, on personal or government emails or mobile devices, during or after the period, from anyone discussing or relaying any data related to this event.
- Any paper copies (including drafts, notes, or communication of any sort) related to this incident, during and after the period.

Regards,
Mr Linlor

EXHIBIT D

Defendant Polson's Initial FRCP 26 Disclsoures. Note that undersigned Counsel Sylvertooth did not disclose until almost a month into Discovery that he is also representing TSA in this case, in an clear attempt to mislead Plaintiff and the Court. Furthermore, Defendant and Defense Counsel are intentionally hiding the contact information required under FRCP 26(a)(1)(A)(i) and with no explanation under 26(a)(1)(A)(iv) to frustrate and impede Plaintiff from deposing relevant witnesses in their individual capacities, for which no TSA approval is necessary, and meriting Rule 37(c) sanctions for failure to disclose contact information, including addresses and phone #s, and for failure to disclose what efforts were made to ascertain insurance, since Defendant's AFGE Union insurance may cover liability.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CAPTAIN JAMES LINLOR,

Plaintiff,

v. **CIVIL ACTION NO. 1:17-cv-00013 (AJT-JFA)**

MICHAEL POLSON,

Defendant.

INDIVIDUAL CAPACITY DEFENDANT MICHAEL POLSON'S INITIAL DISCLOSURES

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, and the Court's September 6, 2017, Rule 16(B) Scheduling Order, the Defendant Michael Polson, in his individual capacity (hereinafter "Mr. Polson"), through his undersigned counsel, submits his initial disclosures. Mr. Polson makes such disclosures based only upon the information reasonably available to him – in his individual capacity – as of September 13, 2017.[1]

As additional information becomes available, Mr. Polson reserves the right to supplement these disclosures and/or to use documents not described herein in accordance with the requirement of Federal Rule of Civil Procedure 26(e).

Moreover, in making these disclosures, Mr. Polson does not admit that any subject matter identified with respect to any individual or any category of document is relevant and/or

[1] Should plaintiff wish to take the deposition of any of the Transportation Security Administration ("TSA") personnel listed below, he may transmit any request for such deposition testimony pursuant to TSA regulations, *see* 6 C.F.R. § 5.41, *et seq* , to undersigned counsel, who will transmit it to the appropriate TSA personnel for review. If TSA approves the request, undersigned counsel will work with TSA to locate and schedule the requested deposition.

admissible. Further, in providing these disclosures, Mr. Polson does not waive any objections, defense, or applicable privileges.

(1) **Rule 26(a)(1)(A)(i)**

Witness	Subject Matter(s)
Susan Callaghan, Transportation Security Manager Contact information unknown.	- Her role and involvement in or concerning the March 10, 2016, incident, which is the subject matter of the instant civil action; - Her job responsibilities; and - TSA rules, regulations, and policies concerning the aviation screening process.
Carl Johannes, Transportation Security Manager Contact information unknown.	- His role and involvement in or concerning the March 10, 2016, incident, which is the subject matter of the instant civil action. - His job responsibilities; and - TSA rules, regulations, and policies concerning the aviation screening process.
Scott Johnson, Federal Security Director Contact information unknown.	- His role and involvement in or concerning the March 10, 2016, incident, which is the subject matter of the instant civil action. - His job responsibilities; and - TSA rules, regulations, and policies concerning the aviation screening process.
Michael Polson, Individual Capacity Defendant Contact through undersigned counsel.	- The March 10, 2016, incident which is the subject matter of the instant civil action - His job responsibilities; and - TSA rules, regulations, and policies concerning the aviation screening process.
William Whetsell, Supervisory Transportation Supervisory Officer Contact information unknown.	- His role and involvement in or concerning the March 10, 2016, incident, which is the subject matter of the instant civil action. - His job responsibilities; and - TSA rules, regulations, and policies concerning the aviation screening process.
Custodian, Transportation Security Administration Contact information unknown.	- Video footage from the closed-circuit television concerning the March 10, 2016, incident which is the subject matter of the instant civil action. - Policies and procedures relating to the recording and preservation of video footage.

Other Transportation Security Administration Employees identified in discovery documents, including subpoena responses.	- Knowledge of, and involvement in, the March 10, 2016 incident which is the subject matter of the instant civil action.
Metropolitan Washington Airports Authority Officers, Specific Officer Names unknown at the time. - Contact information unknown.	- The officers' involvement and investigation of the March 10, 2016 incident, which is the subject matter of the instant civil litigation.

Mr. Polson reserves the right to amend his Rule 26(a)(1)(A)(i) disclosures. Mr. Polson may also rely on individuals identified in Plaintiff's Initial Disclosures to support his defenses.

(2) **Rule 26(a)(1)(A)(ii)**

1. Statement from Michael Polson (Bates Stamped POLSON000001 - POLSON000002), which was produced to Plaintiff on September 11, 2017, in response to a request for production.

2. Video Footage of the March 10, 2016 incident, which has been produced to Plaintiff on several occasions, as well as within Plaintiff's possession as evident by Plaintiff attaching still images from the video to his Complaint.

3. Documents that may be released by Transportation Security Administration and the Metropolitan Washington Airports Authority in response to Plaintiff's subpoenas. Such documents will be in the Plaintiff's possession, with copies to be provided to Mr. Polson via the undersigned counsel.

Mr. Polson reserves the right to amend his Rule 26(a)(1)(A)(ii) disclosures. As discovery is ongoing, Mr. Polson reserves the right to supplement this list of documents and things. Mr. Polson may also rely on documents in the possession, custody, or control of the Plaintiff.

(3) **Rule 26(a)(1)(A)(iii)**

Not Applicable.

(4) **Rule 26(a)(1)(A)(iv)**

Not Applicable.

Respectfully submitted,

DANA J. BOENTE
United States Attorney

By: /s/
D'Ontae D. Sylvertooth
Special Assistant United States Attorney
Dennis C. Barghaan, Jr.
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Email: D'Ontae.Sylvertooth@usdoj.gov

Attorneys for the Federal Defendant

EXHIBIT E

Third parties TSA and MWAA have been repeatedly compelled and commanded to produce evidence, but have concealed in bad faith their destruction of video and other ESI evidence. The acknowledged lack of any litigation hold for preservation by MWAA, or by Defendant Polson or TSA to ask a hold from MWAA eliminates any good faith exception under FRCP 37(e) (see Doe v. Norwalk Community College, 2007 U.S. Dist. (D. Conn., July 16, 2007)). The Order below from this EDVA Court demonstrates an approved Motion to Compel to force MWAA and TSA to stop blaming each other for non-production of the single video they produced, but where NEITHER had issued any preservation of records requests internally nor to each other, and then blamed each other.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

J.L.,

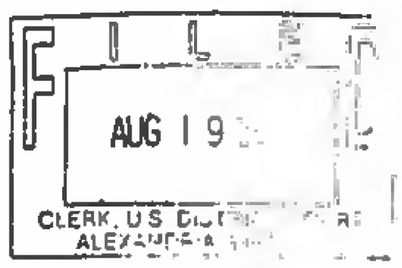
Plaintiff,

v.

INDIA WILEA MITCHELL, *et al.*,

Defendants.

Civil Action No. 1: (GBL/JFA)



ORDER

On Friday, August 19, 2016, the *pro se* plaintiff, counsel for India Wilea Mitchell, John Paul Solo, and Metropolitan Washington Airports Authority, and counsel for third-party Transportation Security Administration of the United States Department of Homeland Security ("TSA") appeared before the court to present argument on plaintiff's Motion to Compel Production of Documents from 3rd Party Department of Homeland Security (Docket no. 90) ("motion to compel"). Upon consideration of the motion, TSA's memorandum in opposition (Docket no. 97), and plaintiff's reply (Docket no. 98), and for the reasons stated from the bench, it is hereby

ORDERED that plaintiff's motion to compel is granted in part and denied in part. Plaintiff has been provided with certain information and may review the information and renew plaintiff's request if needed. TSA shall produce any additional material as discussed by August 31, 2016.

Entered this 19th day of August, 2016.

/s/
John F. Anderson
United States Magistrate Judge

Alexandria, Virginia

John F. Anderson
United States Magistrate Judge

EXHIBIT F

Article shows Reno Airport only behind TSA claims from Dulles and Omaha. "Reno's security checkpoint and baggage inspection areas are 'heavily populated with cameras." One would expect a higher number of video cameras at the security checkpoints at Dulles. The likelihood of ONLY ONE video recording of the attack in this case is implausible. Regardless, the refusal to issue litigation holds removes any good faith exception for later spoliation, and refusal to even produce other video evidence is contrary to FRCP 37(e), for the Court and Plaintiff to evaluate applicability.

paid by the TSA, the highest rate per-capita nationwide, according to USA TODAY's calculations using TSA data. Most — about 81 percent — involved damaged or lost possessions in checked baggage.

At Reno and elsewhere, TSA officials, working out of sight of travelers but with cameras watching, scan all checked bags and, if they see fit, can open any they believe need further inspection. A form is then left inside the bag informing the owner that it was opened and providing an online address for filing a claim.

"They pull out items and when they put them back, most likely they don't pack it as safely as the traveler has," Mora said.

The USA TODAY report's itemized list for Reno shows claims on checked baggage ranged from as low as $0 approved in full for "travel accessories" to $2,974 "settled" in a 2010 claim for damaged "sporting equipment and supplies."

One security checkpoint claim filed in 2012 for $500 in lost currency was approved in full.

The $2,974 claim involved the TSA unpacking a bike that had been put through checked baggage, Mora said, adding, "They did not put the bike back in its packing very well."

Interestingly, among the top dozen airports for TSA paid claims, Reno-Tahoe International was bigger in total passengers than just two others, Omaha, Neb., and Washington Dulles.

Directly behind Reno's paid claims rate of 13.6 per 1 million passengers were Palm Springs, Calif., International Airport at 12.3 claims and Santa Barbara, Calif., at 11.7 claims.

That struck Mora's eye in theorizing why.

"We have some commonality with Palm Springs as a recreational destination," she said. "A lot of sporting equipment comes through here. We have more oversized baggage statistically than other airports. People are carrying more stuff."

The USA TODAY report showed at least seven claims at Reno-Tahoe International for "sporting equipment and supplies."

Mora said TSA officials did not disclose to her specific figures on hand-searched bags at Reno's airport.

But, she said, "We believe the range is about 10-12 percent of total checked bags here get hand searched by the TSA. While we do not have the statistic overall for TSA, we believe that there is a higher percentage of hand searches in Reno due to the types of sports equipment, etc., that come through the checked baggage system."

Wanted: more answers

Mora said she meets periodically with TSA officials at Reno-Tahoe International Airport and the issue of claims has never arisen.

"I'm very surprised at the numbers," she said of USA TODAY's findings. "We've not received any complaints from the public."

She said Reno's security checkpoint and baggage inspection areas are "heavily populated with cameras," and the airport's periodic customer service surveys show "strong satisfaction" with the TSA.

Still, she said of the USA TODAY report's Reno data, "I'm not satisfied. We've asked questions and I'm not satisfied we have enough information. They simply work at this from a national perspective. But I want more answers. The airport and traveling public deserve it."

"We are a community that relies heavily on a good customer experience at the airport," she said. "What we'll do is work with the TSA to get answers why there's a high rate of claims per client here. Whatever the case may be, we're going to be working very closely with them for more information."

The TSA is a federally funded agency and the report's findings on Reno will be reviewed by Sen. Dean Heller, R-Nev., said his spokesman, Neal Patel.

"The TSA has an important responsibility to ensure the safety of all passengers before they step on their plane," Patel said in a statement to the Reno Gazette-Journal. "However, this does not go give the TSA the right to disregard or damage passengers' property. Sen. Heller knows the TSA needs to reform the way it does business, and that must start in Reno."

BY THE NUMBERS

TSA claims at Reno-Tahoe International Airport, 2010-14:

NO ATTORNEY ASSISTED IN THIS DOCUMENT'S PREPARATION.

I certify under penalty of perjury, that a copy of this document was served on all parties on 10 October, 2017, via filing with the CM/EMF Court Filing System.

Local Rule 7(E) and 37(E) Certification per Scheduling Order of 06 September 2017: "Pro Se Plaintiff confirms that he has attempted, in good faith, to confer with and to decrease and/or resolve any matters of disagreement related to discovery with Defendant's Counsel, and to decrease, in every way possible, the filing of unnecessary motions."

Respectfully submitted, and filed with the declaration that all statements in this pleading are true and correct under penalty of perjury.

Date _____ Signed _____(Capt. James Linlor)

Capt. James Linlor
1405 S. Fern Street #90341, Arlington, VA 22202 (775) 298-1505

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c/o Dontae Sylvertooth, Asst US Attorney
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(703) 299-3738 ph; (703) 299-3983 fax